IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. W.A. DREW EDMONDSON, in his Capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)	
Plaintiffs,	)	
v.	)	Case No. 4:05-CV-329-GKF-SAJ
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., WILLOW BROOK FOODS, INC.,	)	
Defendants.	)	

DEFENDANTS' MOTION TO DRAW JURY POOL FROM OUTSIDE THE NORTHERN DISTRICT OF OKLAHOMA AND INTEGRATED OPENING BRIEF IN SUPPORT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION AND BACKGROUND

As set forth in greater detail below, Defendants will show the Court that based upon Plaintiff's prosecution of its claims as *parens patriae* (*i.e.*, to recover relief on behalf of all the residents of the State of Oklahoma), the inherent self interest and bias among the potential venire in this District, and the inability to remedy such juror bias in *voir dire*, their constitutional right to a fair and impartial trial by jury cannot be achieved unless the Court directs that the venire come from an alternative venue. Defendants are not seeking for the Court to transfer this matter to another venue, per se; however, in light of the State's assertion that it represents the venire members in this litigation, Defendants are respectfully requesting that the Court recognize the constitutional infirmities presented by the local venire, and enter an Order directing that the pool of jurors for the trial of this matter, if a trial proves to be necessary, shall be drawn from a district other than the Northern District of Oklahoma and, if the Court considers it most practical, transfer the trial of this action to the district from which the jury pool is drawn. In order to fulfill the Defendants' right to a fair and impartial jury while minimizing the cost and inconvenience to all concerned, Defendants suggest the United States District Court for the District of Kansas, Wichita Division provides the most practical alternative jury pool.

The First Amended Complaint alleges that venue is proper in this Court because "The IRW, including the lands, waters and sediments therein, is situated, in part, in the Northern District of Oklahoma"; that the "alleged endangerment giving rise to the State of Oklahoma's claim under the SWDA has occurred, in part, in the Northern District of Oklahoma" and "a

substantial part of the property that is the subject to the action is situated in the Northern District of Oklahoma." First Amended Complaint (Dkt. 18), para. 3.[1]

It is likely Plaintiff chose to file this lawsuit in this Court because it perceived an advantage based on the existence and resolution of the earlier City of Tulsa case (01-CV-0900Ea(C)) in this District against some of the same Defendants and the massive anti-defendant publicity attending that case.[2] Plaintiff claimed in its filings this was a "related case" to the City of Tulsa lawsuit though it involves a different watershed and some different parties.

By the very nature of the manner in which Plaintiff has structured and asserted its claims, it has created a *per se* bias among the local venire. Plaintiff is alleging that it is bringing these claims against the Defendants through its Attorney General as "*parens patriae* on behalf of the residents of Oklahoma." First Am. Compl. at ¶ 5 (Dkt. 18-1). As explained in further detail below, through its pleadings and discovery responses, Plaintiff has expressed its intention to seek recovery on behalf of all of the residents of Oklahoma, not just limited to the lands or resources owned by the Plaintiff, but extending as well to damages and injunctive relief to address alleged injuries claimed to exist on private citizens' lands within the Oklahoma portion of the Illinois River Watershed ("IRW"). By prosecuting its case in this fashion, Plaintiff has itself declared that every Oklahoma resident has a personal stake in this litigation, even more so for those Oklahomans who live, own property, work or recreate within the IRW. This circumstance of Plaintiff's creation has rendered virtually any venire in Oklahoma, particularly one that includes any portion of the IRW, as unsuited to satisfying Defendants' constitutional right to a fair trial.

[1] Defendants do not assert that venue was improper in this district as a purely procedural manner under 28 U.S.C. § 1391. Given the allegations made by Plaintiff, this lawsuit could have been brought in this district. Rather, Defendants assert that, in light of the State's assertion that every member of the venire is a plaintiff in this case, Defendants cannot reasonably expect to receive a fair jury trial with jurors drawn from this district.

[2] Tyson Foods, Inc.; Cobb-Vantress, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; Cargill, Inc. and George's, Inc. were defendants in the City of Tulsa lawsuit.

Defendants are not requesting a routine transfer of venue from one district to another for convenience of witnesses and the like under 28 U.S.C. § 1404(a). Section 1404(a) is a procedural statute. Defendants' motion is based on the protections of the Fifth (due process) and Seventh (jury trial) Amendments to the United States Constitution. When the Constitution requires a hearing, it requires a fair one, before a tribunal which meets at least currently prevailing standards of impartiality.[3] Constitutional rather than statutory procedural standards apply.[4] Defendants are not founding the instant Motion upon claims of prejudicial pretrial publicity. Much of the reported law about jury prejudice involves criminal cases and prejudicial publicity, because criminal cases tend to generate more intense and more inflammatory publicity than the normal civil case, but civil defendants have the same right to a fair trial as a criminal defendant. *Skaggs v. Otis Elevator Co.*, 164 F.3d 511, 514-15 (10th Cir. 1998) (Constitution guarantees a civil litigant the right to an impartial jury in a civil proceeding); *Province v. Center for Women's Health and Family Birth*, 25 Cal. Rptr. 2d 667, 670-71 (Cal. App. 1993). Granting the Defendants' Motion will moot any concerns over the local venire's exposure to publicity about the lawsuit and prejudicial public comments about the poultry industry. However, should the Court deny the Defendants' request for an alternative venire, they reserve the right to conduct appropriate research to determine whether or not publicity has created a further impairment of their rights to a fair trial, and if found to exist, to file a motion for relief at the appropriate time.

This case is unusual; under the State's theory jurors chosen from this district would for practical purposes be akin to plaintiffs themselves. Other courts, faced with similar unusual circumstances, have recognized that courts can fashion appropriate remedies.

---

[3] *See, e.g., Cross v. Georgi*a, 581 F.2d 102, 104 (5th Cir. 1978) for statements of this basic principle.

[4] Thus no balancing of convenience of witnesses and the like, as in *Chrysler Credit Corp. v. County Chrysler*, 928 F.2d 1509 (10th Cir. 1991) or similar cases is necessary or even appropriate in deciding **whether** to transfer the case elsewhere. Those considerations might become important in deciding **where** to transfer the case for trial.

II. BECAUSE OF THE STATE'S ASSERTIONS, THE PERSONAL INTEREST PREJUDICE IN THIS DISTRICT REQUIRES THAT THE JURY POOL BE DRAWN FROM OUTSIDE THIS DISTRICT

A. JURORS ARE PART OF THE COMMUNITY AFFECTED BY THIS LITIGATION AND FEEL AN OBLIGATION TO THE COMMUNITY

In this case, the Oklahoma Attorney General claims he is proceeding as *parens patriae* on behalf of all Oklahomans and that he seeks recovery against the Defendants "for the benefit of the public." First Am. Compl. at ¶ 5 (Dkt. 18-1). By extension, the potential jurors in this District will be cast in the role of protecting the interests of **their neighbors, their families and themselves**. Another Oklahoma court, faced with similar problems, made the following observations.

> (discussing extensive pretrial publicity) Properly motivated and carefully instructed jurors can and have exercised the discipline to disregard that kind of prior awareness. Trust in their ability to do so diminishes when the *prior exposure is such that it evokes strong emotional responses or such an identification with those directly affected by the conduct at issue that the jurors feel a personal stake in the outcome*. That is *also true when there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience*.
>
> *United States v. McVeigh*, 918 F. Supp. 1467, 1473 (W.D. Okla. 1996) (emphasis added).

This lawsuit involves lurid claims made by Plaintiff against Defendants, claims which have been widely publicized. The pool of potential jurors has been told "foreign poultry companies" are responsible for damaging the waters from which they drink or in which they enjoy various sports or recreation, and that their Attorney General is in this court representing the potential jurors' own interests against those foreigners.

Plaintiff alleges that the Defendants have knowingly endorsed "waste disposal practices" which lead to the "release of large quantities of phosphorus and other hazardous substances, pollutants and contaminants in the poultry waste onto and from the fields and into the waters of

the IRW." First Am. Compl. at ¶ 52 (Dkt. 18-1). The First Amended Complaint also discusses the various claimed damages to human beings from materials Plaintiff claims were put in the water by virtue of the (lawful) use of poultry litter by farmers and ranchers. *Id.* at ¶¶ 58, 62, 64, 95, 96, 100, 102, 105, 107, and 115. Plaintiff claims punitive damages alleging "reckless and intentional indifference to and disregard of the public's health and safety." *Id.* at ¶ 107. The Attorney General has also repeated these claims in various press conferences and other public statements.

The First Amended Complaint appeals to the financial interests of potential jurors in sticking "foreign corporations" with the tab for maintaining Oklahoma waters.[5] Counts 1 through 3 accuse the Defendants of "releases" or "threatened releases" of "hazardous substances." Count 4, the nuisance theory, alleges that the Defendants have "caused an unreasonable and substantial danger to the public's health and safety in the IRW. . .." Count 5 similarly claims the Defendants have "intentionally carried on an activity that has significantly threatened to cause and is significantly threatening to cause unreasonable and substantial danger to the public's health and safety in the IRW. . .." Plaintiff accuses the Defendants of destroying the drinking water and wildlife in the IRW. Plaintiff asks that the Defendants (ignoring all of the Oklahoma-based persons and public and private entities who own and manage operations in the IRW that have the potential to affect the very same natural resources) be ordered to pay for bringing the IRW back to some pre-industrial Golden Age, as "restitution" for any profits they may have made over the years from the perfectly lawful activities of their independent growers who followed existing state regulations.

[5] Of course Plaintiff is prosecuting its causes of action solely against certain poultry companies in contravention of its own state agency reports and studies, which allege significant impacts in the IRW from large domestic cattle operations, commercial nurseries, golf courses, waste water treatment facilities and the high number of faulty septic systems, just to name a few.

Plaintiff also alleges that some form of massive restoration of the IRW is required. It alleges that "land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other such resources" must be restored, replaced or acquired. *Id.* at ¶¶ 89, 105, 116, 124, and Prayer for Relief. If and when these arguments are presented to a jury, the message will be clear – if you do not make these Defendants pay, then the State, *i.e.*, you, the Taxpayer, will have to pay for this restoration. What reasonable person placed in such a position could avoid concluding that it is in his/her self interest to see that the State does not bear these alleged costs? The Defendants respectfully assert that there is no such person in the local venire.

Aside from their purely economic interest, the jurors will be told that they are in physical danger from the Defendants' actions, who by the way are not from around here, and that their only reasonable course is to go along with their personal interest and find that these Defendants should stop their alleged polluting activities and pay for prettying up the local streams and Lake Tenkiller. Plaintiff has presented this case as being for the benefit of all Oklahomans with a special emphasis on water consumers, land owners, and residents of the IRW, as well as people who enjoy the Illinois River and Lake Tenkiller recreationally, many of whom are within the local venire. Hence, the inhabitants of this district are likely to consider that, according to the State's theory, they **personally** bear health risks and potentially higher taxes, which simply disappear if they act in accord with their interests and find in favor of Plaintiff.

B. UNDER THE STATE'S THEORY, JURORS HAVE A FINANCIAL STAKE IN THE OUTCOME OF THE LITIGATION AND THEREFORE THE LAW REQUIRES A DIFFERENT JURY POOL FOR FAIRNESS

Due process requires that parties to a lawsuit receive a fair trial in a fair tribunal. *Withrow v. Larkin*, 421 U.S. 35, 46 (1975).

> [A] fair trial in a fair tribunal is a basic requirement of due process. . . . Not only is a biased decision maker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness." In pursuit of this end, various situations have been identified in which experience teaches that the probability of **actual bias** on the part of the judge or decision maker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome. . . .

Withrow v. Larkin, 421 U.S 35, 46-47 (1975) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955))(emphasis added).

The Supreme Court has noted that in most instances the purpose of statutorily specified venue is to protect the **defendant** against the risk that a plaintiff will select an unfair or inconvenient place of trial. *Leroy v. Great Western United Corp.*, 443 U.S. 173, 183-84, 99 S. Ct. 2710, 2717 (1979). The Constitution also provides protections for a defendant; those protections are key to this motion.

These constitutional issues are emphatically raised in this case by virtue of the Oklahoma Attorney General's claim of standing under the doctrine of *parens patriae*. The Attorney General has made it clear that he is not just seeking relief on behalf of the generalized "public." Rather, Plaintiff's discovery responses reveal that it is seeking to recover relief on behalf of landowners within the Oklahoma portion of the IRW. Specifically, Plaintiff is asserting that it can recover damages and injunctive relief to address alleged injury to surface water, groundwater, biota (birds, mammals, fish, and invertebrates), sediments and land, which are owned by private citizens. *See* Resp. to Peterson Farms Inter. No. 8 (attached as Ex.1). By virtue of the standing Plaintiff asserts, it is prosecuting private rights, rights these landowners could have pursued in their own name had they perceived their own property injured at the hands of the Defendants. Thus, these landowners (and potential jurors) have a direct and personal

financial interest and stake in this litigation, which spills over to neighbors, friends and relatives who may also be among the Northern District venire.

The probability of actual bias by the fact-finder is what the Supreme Court describes as "too high to be constitutionally tolerable" when that fact-finder has a financial interest in the outcome of the case. *Withrow*, 421 U.S. at 47. This would not be the first situation where a financial interest by potential jurors provided a basis for changing the source from which those jurors are drawn. In *Washington Public Utilities Group v. United States District Court for the Western District of Washington*, 843 F.2d 319 (9th Cir. 1987), the potential jury pool had a stake in the outcome - a judgment against the utility might increase their personal utility rates. The district court concluded a transfer to another state (from Washington to Arizona) was appropriate to remove this problem. The Ninth Circuit refused to set aside the ruling because besides pervasive, prejudicial publicity, "**a substantial number of potential jurors had a financial interest in the outcome of the case**." 843 F.2d at 327 (emphasis added).

In other cases, personal interests among the pool of potential jurors have been enough to warrant using another set of potential jurors and moving the trial to their location. For example, in *Ex Parte Monsanto Co.*, 794 So. 2d 350 (Ala. 2001), an out-of-state defendant was facing claims it had released PCBs in the county where the case was pending. The defendant asked the state Supreme Court (via a request for a writ of mandamus) to order the trial moved out of the county. The trial judge was proceeding toward trial without ruling on the pending motion to change venue. Like Defendants in this case, Monsanto had faced extensive publicity about the allegations and the Alabama Supreme Court noted its concern "about the possibility that Calhoun County citizens, while serving as jurors, could come to consider themselves to be in harm's way because of the alleged wrongdoing by Monsanto." The state Supreme Court declined to grant the

extraordinary writ, because it did not want to tell the trial court **how** to rule on the pending motion, but instructed the trial court to consider the motion to transfer based upon the prejudicial pretrial coverage and possibility the jurors could "come to consider themselves to be in harm's way" because of the defendant.

Similarly, the courts of Mississippi have upheld the transfer of a case based on the potential personal interest of the jury pool as well as excessive pre-trial publicity.[6] *Beech v. Leaf River Forest Prods., Inc.*, 691 So. 2d 446 (Miss. 1997). There, as here, the allegations concerned the waters in which the inhabitants fished, boated and swam.

III. ***VOIR DIRE*** IS AN INADEQUATE MECHANISM TO ADDRESS JURY BIAS IN THIS INSTANCE

Federal courts have often been reluctant to change jury pools or move the location of trial on the notion that the Court can adequately screen the venire during *voir dire* or give cautionary instructions. To rely on *voir dire* to neutralize the self-preservation mindset of a jury pool with a potential personal interest in the outcome of a case is to rely on an outdated view of human information processing.

Jury personal interest, real or perceived, presents problems which cannot always be handled adequately through the *voir dire* process. *See, e.g.*, Neil Vidmar, *The Jury in Practice: When All of Us are Victims: Juror Prejudice and 'Terrorist' Trials*, 78 CHI.-KENT L. REV. 78 (2003) (about potential juror attitudes in the John Walker Lindh case).

Potential jurors sitting for *voir dire* quickly pick up on the acceptable responses. And they will likely give answers that conform with the expected majority opinion. *See* Peter D. O'Connell, *Pretrial Publicity, Change of Venue, Public Opinion Polls: A Theory of Procedural*

[6] There were several dioxin cases pending in the area, and many potential jurors were potential class members in a case pending in another county.

Justice, 65 U. OF DET. L. REV. 169 (1988); Thomas J. Scheff, *Shame and Conformity: The Deference-Emotion System*, AM. SOC. REV. 53 (1988). Questioning a juror about whether he can put aside preconceptions and pre-loaded opinions and be fair has good intentions, but does not really solve the problem. *See* Richard Seltzer et al, *Juror Honesty During Voir Dire*, 19 J. CRIM. JUST. 451 (1991). As one study concluded, "Although courts around the world often believe that jurors are able to set aside any preconceived notions about a defendant and base their verdicts solely on the evidence presented at trial, this belief is not supported by the findings from empirical research." Christina A. Studebaker & Steven D. Penrod, *Pretrial Publicity and its Influence on Juror Decision-Making*, *in* N. Brewster & K.D. Williams, PSYCHOLOGY AND THE LAW: AN EMPIRICAL PERSPECTIVE (New York: Guilford, 2005).

We now have a growing understanding of the way in which jurors are actually influenced by publicity, community pressure to conform, or personal interest in the outcome. The law is therefore also taking that new understanding into account in fashioning remedies. In *Beech v. Leaf River Forest Prod., Inc.*, 691 So. 2d 446, 450 (Miss. 1997) the Mississippi Supreme Court observed that it had previously recognized the ineffectiveness of voir dire in detecting juror bias. The court noted what the modern psychological research has been gradually establishing for the last few decades: "Since jurors are aware that they are supposed to be impartial, they are unlikely to reveal any bias, even if they recognize it in themselves." *See id.*

The *McVeigh* case from the Western District of Oklahoma tackled, head on, the psychological issues involved in cases which have clearly identified one side as the "villain" and in which there is likely community pressure on jurors to reach a particular result.

> The existence of such a prejudice is difficult to prove. Indeed it may go unrecognized in those who are affected by it. *The prejudice that may deny a fair trial is not limited to a bias or discriminatory attitude. It includes an impairment of the deliberative process of deductive reasoning from evidentiary facts resulting*

> *from an attribution to something not included in the evidence*. That something has its most powerful effect if it generates strong emotional responses and fits into a pattern of normative values. . . . Trust in their ability to do so [disregard extensive publicity] diminishes when the prior exposure is such that it evokes strong emotional responses or such an identification with those directly affected by the conduct at issue that the jurors *feel a personal stake in the outcome. That is also true when there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience*.

918 F. Supp. at 1472, 1473 (emphasis added).

The constitutional right of the Defendants to a fair trial simply cannot be preserved by relying on the *voir dire* process when faced with a venire who will be confronted with their own personal interests and the alleged need to protect themselves from the risk posed by the poultry companies. *Marsden v. Moore*, 847 F.2d 1536 (11th Cir. 1988) recognized a juror's assurances in *voir dire* that he can lay aside his prior impressions is not dispositive. 847 F.2d at 1543. *United States v. Lehder-Rivas*, 955 F.2d 1510 (11th Cir. 1992), also recognized that a court should evaluate the credibility of jurors who claim no prejudice in a high profile case. "If community sentiment is strong, courts should place "emphasis on the feeling in the community rather than the transcript of voir dire: which may not 'reveal the shades of prejudice that may influence a verdict.'" *United States. v. Campa*, 419 F.3d 1219, 1259 (2005), quoting *Pamplin v. Mason*, 364 F.2d 1, 7 (5th Cir. 1966). *Campa* observed: "In *Irvin*, [*v. Dowd*, 366 U.S. 717, 728 (1961)] the Supreme Court held that a defendant was entitled to a change of venue even though each individual juror had specifically claimed the capacity to be fair and impartial." It noted: "No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father. Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight."

The *per se* bias and prejudice created by Plaintiff cannot be cured by the jury selection process in this District. Tendering a potential jury panel composed in large part of people who feel personal financial interests (and who are told by the State that they have such an interest) would in effect extinguish Defendants' peremptory challenges. It would be impossible to cure the problem with peremptory challenges unless Defendants were afforded an unlimited number. The only adequate remedy is a change of the source from which potential jurors are drawn. Defendants recognize that, as a practical matter, this may or may not mean moving the physical location of the actual trial to the district where the jurors are located. Defendants respectfully suggest, that a venire panel could be drawn from the nearby District of Kansas, whose juror pool does not present the same *per se* personal interest issues as residents of this District under the Plaintiff's theory of the case.

IV. CONCLUSION

Defendants are entitled to a fair trial with a jury drawn from an unbiased population. Defendants are entitled to these constitutional rights even though they are business corporations from out of town. Plaintiff has filed a lawsuit alleging that out-of-state poultry companies are responsible for contaminating the local residents' water and threatening their health and should be forced to pay for restoring area waters to pre-industrial levels so no local citizens (or actors in the watershed) will have that expense. Plaintiff says that the Attorney General represents each of the individual citizens of the state in this lawsuit, thereby appealing to the potential jurors' personal financial and health interests. Thus, as framed by Plaintiff the potential jurors from this District are themselves beneficiaries of any judgment for Plaintiff, and will be under enormous personal and social pressure to find for Plaintiff. *Voir dire* procedures, and reliance on the candor of potential jurors, cannot remedy these problems and is inadequate protection for

Defendant' rights. The Constitution requires that the jurors for the trial of this case be drawn from another district where these problems do not exist, at least in this exaggerated form. Accordingly, Defendants request the Court enter an Order designating another District outside of Oklahoma from which the jurors for any trial of this matter will be selected..

Respectfully submitted

s/John R. Elrod
John R. Elrod, AR Bar Number 71026
Vicki Bronson, OK Bar Number 20574
CONNER & WINTERS, LLP
211 East Dickson Street
Fayetteville, AR 72701
Telephone: (479) 582-5711
Facsimile: (479) 587-1426

and

D. Richard Funk, OK Bar No. 13070
Bruce W. Freeman, OK Bar No. 10812
CONNER & WINTERS, LLP
4000 One Williams Center
Tulsa, OK 74172-0148
Telephone: (918) 586-5711
Facsimile: (918) 586-8547

ATTORNEYS FOR DEFENDANT
SIMMONS FOODS, INC.

/s/ John H. Tucker
John H. Tucker
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C.
100 West Fifth Street, Suite 400
Tulsa, OK 74121-1100
Counsel for Cargill, Inc. and
Cargill Turkey Production, LLC

/s/ Robert W. George
Robert W. George
Michael R. Bond
Erin W. Thompson
Kutak Rock, LLP
The Three Sisters Building
214 West Dickson
Fayetteville, AR 72701
Counsel for Tyson Foods, Inc.,
Tyson Poultry, Inc., Tyson Chicken,
Inc., and Cobb-Vantress, Inc.

/s/Gary Weeks
Gary Weeks
James W. Graves
Bassett Law Firm
P.O. Box 3618
Fayetteville, AR 72702-3618
Counsel for George's, Inc. and
George's Farms, Inc.

/s/ A. Scott McDaniel
A. Scott McDaniel
Phillip D. Hixon
Nicole Longwell
McDaniel, Hixon, Longwell & Acord PLLC
320 South Boston Avenue, Suite 700
Tulsa, OK 74103
Counsel for Peterson Farms, Inc.

/s/Jennifer Stockton Griffin
Jennifer Stockton Griffin
Lathrop & Gage LC
314 East High Street
Jefferson City, MO 65101
Counsel for Willow Brook Foods, Inc.

/s/ Robert E. Sanders
Robert E. Sanders
Stephen Williams
Young, Williams, Henderson & Fusilier
P.O. Box 23059
Jackson, MS 39225-3059
Counsel for Cal-Maine Foods, Inc.
and Cal-Maine Farms, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2007, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Douglas Allen Wilson
Melvin David Riggs
Richard T. Garren
Sharon K. Weaver
Riggs Abney Neal Turpen
Orbison & Lewis
502 West 6th Street
Tulsa, OK 74119-1010
Counsel for Plaintiff

Robert Allen Nance
Dorothy Sharon Gentry
Riggs Abney Neal Turpen
Orbison & Lewis
5801 North Broadway, Suite 101
Oklahoma City, OK 73118
Counsel for Plaintiff

William H. Narwold
Motley Rice LLC
20 Church Street, 17th Floor
Hartford, CT 06103
Counsel for Plaintiff

Robert W. George
Michael R. Bond
Erin W. Thompson
Kutak Rock, LLP
The Three Sisters Building
214 West Dickson
Fayetteville, AR 72701
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

David Phillip Page
James Randall Miller
Louis Werner Bullock
Miller Keffer & Bullock
222 South Kenosha
Tulsa, OK 74120-2421
Counsel for Plaintiff

W.A. Drew Edmondson
Attorney General
Kelly Hunter Burch
J. Trevor Hammons
Assistant Attorneys General
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Counsel for Plaintiff

Elizabeth C. Ward
Frederick C. Baker
Lee M. Heath
Elizabeth Claire Xidis
Motley Rice LLC
28 Bridgeside Blvd.
P.O. Box 1792
Mount Pleasant, SC 29465
Counsel for Plaintiff

Patrick Ryan
Stephen Jantzen
Paula M. Buchwald
Ryan, Whaley & Coldiron
900 Robinson Renaissance
119 North Robinson, Suite 900
Oklahoma City, OK 73102
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

Mark D. Hopson
Timothy K. Webster
Jay T. Jorgensen
Sidley, Austin Brown & Wood, LLP
1501 K. Street, N.W.
Washington, D.C. 20005-1401
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

Gary Weeks
James W. Graves
Bassett Law Firm
P.O. Box 3618
Fayetteville, AR 72702-3618
Counsel for George's, Inc. and George's Farms, Inc.

Randall Eugene Rose
George W. Owens
Owens Law Firm PC
234 West 13th Street
Tulsa, OK 74119-5038
Counsel for George's, Inc. and George's Farms, Inc.

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Faegre & Benson
90 South 7th Street, Suite 2200
Minneapolis, MN 55402-3901
Counsel for Cargill, Inc. and Cargill Turkey Production, LLC

Robert P. Redeman
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC
P.O. Box 1710
Tulsa, OK 74101
Counsel for Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.

John H. Tucker
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C.
100 West Fifth Street, Suite 400
Tulsa, OK 74121-1100
Counsel for Cargill, Inc. and Cargill Turkey Production, LLC.

Terry West
The West Law Firm
124 West Highland Street
Shawnee, OK 74801
Counsel for Cargill, Inc. and Cargill Turkey Production, LLC

A. Scott McDaniel
Phillip D. Hixon
Nicole Longwell
McDaniel, Hixon, Longwell & Acord, PLLC
320 South Boston Avenue, Suite 700
Tulsa, OK 74103
Counsel for Peterson Farms, Inc.

Sherry P. Bartley
Mitchell Williams Selig Gates & Woodyard PLLC
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201-3525
Counsel for Peterson Farms, Inc.

Jennifer Stockton Griffin
Lathrop & Gage LC
314 East High Street
Jefferson City, MO 65101
Counsel for Willow Brook Foods, Inc.

Raymond Thomas Lay
Kerr Irvine Rhodes & Ables
201 Robert S. Kerr Avenue, Suite 600
Oklahoma City, OK 73102
Counsel for Willow Brook Farms, Inc.

Robert E. Sanders
Stephen Williams
Young, Williams, Henderson & Fusilier
P.O. Box 23059
Jackson, MS 39225-3059
Counsel for Cal-Maine Foods, Inc. and Cal-Maine Farms, Inc.

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood
120 North Robinson, Suite 2720
Oklahoma City, OK 73102
Counsel for Intervnors, State of Arkansas and Arkansas Natural Resources Commission

Charles Moulton
Senior Assistant Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
Counsel for Intervenors, State of Arkansas and Arkansas Natural Resources Commission

and I hereby certify that I have mailed the document by the United States Postal Service to the following non CM/ECF participants:

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
Counsel for Plaintiff

Thomas C. Green
Sidley, Austin Brown & Wood, LLP
1501 K. Street, N.W.
Washington, D.C. 20005-1401
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc.

Dustin McDaniel, Attorney General
Justin Allen, Chief Dep. Attorney General
Jim DePriest, Dep. Attorney General
Office of the Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
Counsel for Intervenors, State of Arkansas and Arkansas Natural Resources Commission

s/John R. Elrod
John R. Elrod